

<b>SOLICITATION, OFFER AND AWARD</b> <b>(Construction, Alteration, or Repair)</b>	1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	DOL099RB20702	<input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	06-03-2009	1

IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
	94-0991-1197 mcg	
CODE		
7. ISSUED BY	8. ADDRESS OFFER TO	
OASAM Office of Procurement Services U. S. Department of Labor RM N-4308 200 Constitution Ave., NW Washington DC 20210	U.S Department of Labor/OASAM/OPS c/o MAK Architects, Inc. 8328-R Olive Blvd. St. Louis, MO 63132	
9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)
	Mr. Lei-Hoo Mak	(314) 997-3802

**SOLICITATION**

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

STANDARD CLAUSES ATTACHED HERETO FROM THE FAR: PART 52, ADDITIONAL INSTRUCTIONS TO BIDDERS; SUPPLEMENTAL, CONDITIONS; LABOR STANDARD PROVISIONS; EQUAL EMPLOYMENT CLAUSES; AND SPECIFICATIONS DRAWINGS, ADDENDA, AND CONDITIONS AS PREPARED BY:

MAK Architects, Inc.  
Dated: May 11, 2009  
Labeled: Project Manual, Volume I  
St. Louis Job Corps Center  
St. Louis, Missouri

ESTIMATED COST RANGE: MORE THAN \$10,000,000

NOTICE: This is a 100% Small Business Set-Aside

THIS PROCUREMENT IS BEING FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA), PUBLIC LAW 11-5 (FEBRUARY 17, 2009).

11. The Contractor shall begin performance within <u>14</u> calendar days and complete it within <u>546</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See <u>52.211-10, Section F, F-1.</u> )	
12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS Ten (10)
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
A. Sealed offers in original and <u>2</u> copies to perform the work required are due at the place specified in Item 8 by <u>2:00 PM</u> (hour) local time <u>07-22-2009</u> (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, the date and time offers are due	
B. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference	
D. Offers providing less than <u>90</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

**OFFER(Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

15. TELEPHONE NO. (Include area code)

16. REMITTANCE ADDRESS (Include only if different than Item 14)

CODE

FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of the solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS

0001 Total Lump Sum: \$ \_\_\_\_\_

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER  
(Type or print)

20B. SIGNATURE

20C. OFFER DATE

**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
(4 copies unless otherwise specified)

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c) ( ) ☐

26. ADMINISTERED BY

CODE

27. PAYMENT WILL BE MADE BY

OASAM Office of Procurement Services  
U. S. Department of Labor  
RM S4307  
200 Constitution Ave., NW  
Washington DC 20210

OASAM BRANCH OF INVOICE PAYMENTS  
RM: N-4464  
US DEPARTMENT OF LABOR  
200 CONSTITUTION AVENUE, NW  
WASHINGTON DC 20210

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED  
TO SIGN (Type or print)

31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA

BY

## **A.1 PUBLICATION DISCLOSURE**

This action has been identified as being funded under the American Recovery and Reinvestment Act, PL. (February 17, 2009) (ARRA). For each such government contract, DOL is required to post certain details of the contract on DOL's website, which is linked to Recovery.gov via the award number. For contracts over \$500,000.00, DOL is also required to post a summary of the contract.

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**PART I - THE SCHEDULE**

**SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS**

**SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK**

## SPECIFICATIONS PREPARED BY:

MAK Architects, Inc.  
8328-R Olive Blvd.  
St. Louis, Missouri 63132

DATED: May 11, 2009

LABELED: PROJECT MANUAL Volumes 1  
St. Louis Job Corps Center  
St. Louis, Missouri

AND CONTAINING BIDDING AND CONTRACTUAL DOCUMENTS:

**VOLUME 1**

## DIVISION 0 – PROCUREMENT AND CONTRACTING REQUIREMENTS

- 00105 Professional Certifications
- 00107 Professional Seals
- 00320 Reference Material - Report of Geotechnical Services

## DIVISION 1 - GENERAL REQUIREMENTS

- 01100 Summary of Work
- 01290 Payment Procedures
- 01310 Project Management and Coordination
- 01400 Quality Requirements
- 01420 References**
- 01500 Temporary Facilities and Controls**
- 01600 Product Requirements**
- 01700 Execution Requirements**
- 01731 Cutting and Patching**
- 01740 Warranties**
- 01770 Closeout Procedures**
- 01781 Project Record Documents**
- 01782 Operation and Maintenance Data**
- 01820 Demonstration and Training**

## DIVISION 2 - SITE WORK

- 02221 Building Demolition**
- 02230 Site Clearing**
- 02300 Earthwork**
- 02510 Water Distribution**

02530	Sanitary Sewer
02584	Underground Ducts and Utility Structures
02620	Subdrainage
02630	Storm Drainage
02741	Hot-Mixed Asphalt Paving
02751	Cement Concrete Paving
02821	Chain-Link Fences and Gates
02830	Ornamental Metal Railing

*DIVISION 3 – CONCRETE*

03300	Cast-In-Place Concrete
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## DIVISION 4 – MASONRY

04720	Cast Stone
04810	Unit Masonry Assemblies
04815	Glass Unit Masonry Assemblies

## DIVISION 5 – METALS

05120	Structural Steel
05210	Steel Joists
05310	Metal Steel Deck
05400	Cold-Formed Metal Framing
05500	Metal Fabrications
05511	Metal Stairs and Railings
05811	Architectural Joint Systems

## DIVISION 6 - WOOD AND PLASTICS

06100	Rough Carpentry
06160	Sheathing
06402	Interior Architectural Woodwork

## DIVISION 7 - THERMAL AND MOISTURE CONTROL

07210	Building Insulation
07241	Exterior Insulation and Finish Systems – Class PB
07311	Asphalt Shingles
07460	Metal Soffit
07531	EPDM Membrane Roofing
07620	Sheet Metal Flashing and Trim
07720	Roof Accessories
07841	Through-Penetration Firestop Systems
07842	Fire-Resistive Joint Systems
07920	Joint Sealants

## DIVISION 8 - DOORS AND WINDOWS

08110	Steel Doors and Frames
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08211	Flush Wood Doors
08410	Aluminum Storefronts
<b>08520</b>	<b>Aluminum Windows</b>
08711	Door Hardware
	Door Hardware Schedule
08800	Glazing

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09385	Stone Countertops
09511	Acoustical Panel Ceilings
09651	Resilient Floor Tile
09653	Resilient Wall Base and Accessories
09680	Carpet
09912	Painting
09960	High-Performance Coatings

**DIVISION 10 – SPECIALTIES**

10432	Interior Signage
10520	Fire Protection Specialties
10801	Toilet and Bath Accessories

**DIVISION 11 – EQUIPMENT**

**Not Used**

**DIVISIONS 12 – FURNISHINGS**

Not Used

**DIVISIONS 13 - SPECIAL CONSTRUCTION**

Not Used

**DIVISION 14 - CONVEYING SYSTEMS**

Not Used

**DIVISION 15 – MECHANICAL**

15000	General Provisions
15010	Contract Close-Out & Commissioning
15050	Materials and Methods
15067	Testing Piping Systems
15100	Valves
15190	Mechanical Identification
15250	Piping Insulation
15300	Wet-Pipe and Dry-Pipe Sprinkler Systems

15400	Plumbing
15440	Plumbing Fixtures and Trim
15488	Gas Piping Systems
15530	Refrigerant Piping
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15670	Condensing Units
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15800	Air Distribution
15971	Controls & Instrumentation
15980	Commissioning
15990	Testing Adjusting and Balancing of HVAC Systems

**Division 16 – ELECTRICAL**

16000	Basic Electrical Requirements
16010	Contract Close-Out
16110	Raceways
16120	Wires and Cables
16130	Boxes
16150	Wiring Devices
16190	Electrical Identification
16400	Electrical Equipment
16450	Secondary Grounding
16500	Lighting
16721	Fire Alarm System
16950	Testing

END LIST OF SPECIFICATIONS

DRAWINGS PREPARED BY: **MAK Architects, Inc.**

DATED: **May 11, 2009**

AND CONTAINING DRAWINGS AS FOLLOWS:

**VOLUME 1**

T1	PROJECT COVER SHEET
C1	SITE SURVEY
C2	OVERALL SITE PLAN
C3	GRADING PLAN
C4	SEWER PLAN
C5	SEWER PROFILES
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- A1-7 SITE DETAILS
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- A2-2 DORM #I STANDARD MALE DORM. - 2ND FLOOR PLAN
- A2-3 DORM #II STANDARD MALE DORM.+HONOR DORM. - 1ST FLOOR PLAN
- A2-4 DORM #II STANDARD MALE DORM.+HONOR DORM. - 2ND FLOOR PLAN
- A2-5 DORM #III STANDARD FEMALE DORM+HONOR DORM.-1ST FLOOR PLAN
- A2-6 DORM #III STANDARD FEMALE DORM. + HONOR DORM. - 2ND FLOOR PLAN
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- A2-8 DORM #II ROOF PLAN
- A2-9 DORM #III ROOF PLAN
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- A7-9 DORM #III 2ND FLOOR INTERIOR FINISHES
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CEILING PLAN
- A8-2 DORM #I STANDARD MALE DORM. - 2ND FLOOR PLAN - REFLECTED  
CEILING PLAN
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REFLECTED CEILING PLAN
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REFLECTED CEILING PLAN
- A8-5 DORM #III STANDARD FEMALE DORM+HONOR DORM-1ST FLOOR PLAN  
REFLECTED CEILING PLAN
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FP-4	DORM #II 2ND FLOOR FIRE PROTECTION PLAN
FP-5	DORM #III 1ST FLOOR FIRE PROTECTION PLAN
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E15	DORM #I 1ST FLOOR FIRE ALARM PLAN
E16	DORM #I 2ND FLOOR FIRE ALARM PLAN
E17	DORM #II 1ST FLOOR FIRE ALARM PLAN
E18	DORM #II 2ND FLOOR FIRE ALARM PLAN
E19	DORM #III 1ST FLOOR FIRE ALARM PLAN
E20	DORM #III 2ND FLOOR FIRE ALARM PLAN
E21	ENLARGED ROOM LAYOUT - FIRE ALARM PLANS
E22	LIGHT FIXTURE SCHEDULE
E23	ELECTRICAL DETAILS & DIAGRAMS
E24	PANELBOARD SCHEDULE

END LIST OF DRAWINGS

**SECTION D - PACKAGING AND MARKING**

**[For this Solicitation, there are NO clauses in this Section]**

**SECTION E - INSPECTION AND ACCEPTANCE****E.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

NUMBER

TITLE

DATE

**E.2 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)**

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not -

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.



**SECTION F - DELIVERIES OR PERFORMANCE****F.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

NUMBER	TITLE	DATE
52.211-13	TIME EXTENSIONS	SEP 2000
52.242-14	SUSPENSION OF WORK	APR 1984

**F.2 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984) ALTERNATE I (APR 1984)**

The Contractor shall be required to (a) commence work under this contract within 14 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 546 days after receipt of receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by (TO BE DETERMINED). The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

**F.3 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEPT 2000) ALTERNATE I (APR 1984)**

(a) If the Contractor fails to complete each separate part or stage of the work within the time specified in the contract for that part or stage, or any extension, the Contractor shall pay to the Government as liquidated damages the following amounts:

PART OR STAGE OF THE WORK	LIQUIDATED DAMAGES FOR EACH DAY OF DELAY
	\$1,000.00

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 PRECONSTRUCTION CONFERENCE**

A preconstruction conference shall be held at a place and time to be determined by the Contracting Officer within two weeks of Notice to Proceed. Contractors and their subcontractors are urged to attend. The purpose of this conference is to review procedures and to discuss questions in regard to the contract documents. The Contracting Officer or his/her representative will make clarifications.

### **G.2 PERIODIC PROJECT MEETINGS**

The Contracting Officer may, at his/her discretion, establish periodic progress meetings for the general contractor and subcontractors in the interest of coordination and construction work.

### **G.3 SUBCONTRACTS**

Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

The contractor shall be responsible to the Government for acts and omissions of its own employees and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and suppliers.

The Government will not undertake to settle any differences between or among the Contractor, subcontractors or suppliers.

### **G.4 SHOP DRAWINGS**

The Contracting Officer's representative for the review of shop drawings will be the Design/Architect/Engineer or other representatives determined at the preconstruction conference. If there appears to be a change of scope as the result of a shop drawing review, the Contracting Officer will resolve the matter pursuant to Clause 52.243-7 of the General Provisions.

### **G.5 OPERATIONS, STORAGE AREAS, AND SECURITY**

All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved. The Contractor shall erect whatever barriers or enclosures are necessary to define the site and protect the materials, equipment and work. The Contractor shall hold and save the Government, its officers and agents, and the Center Operating Contractor free and harmless from liability of any nature occasioned by its operations.

The Contractor shall comply with regulations governing the operations on the premises which are occupied and shall perform the contract in a manner that will not interfere with the conduct of normal business.

All persons employed under this contract shall, while on the premises, observe the regulations in effect at the site, and are cautioned that entrance to any existing building outside the scope of the contract is forbidden, except by official permission.

The Contractor will be doing work on federally owned or controlled property. All persons employed under the contract are to observe security regulations in effect at the site. The Contractor and all persons employed under the contract are required to comply with established security, sign-in, and random search procedures.

All work that will affect or alter the normal operations of the Center is to be coordinated with the operating contractor of the Center through the Architect/Engineer at least one week in advance. If the work requires partial or total interruption of utilities, two weeks written notice must be given.

The Contractor shall furnish and install barricades or enclosures necessary to keep all dust and debris away from the facilities that are to remain in use at the Center.

The Contractor shall carefully remove and relocate all salvageable material to such areas as designated by the Contracting Officer.

The Contractor and all persons employed under the contract will not be permitted to utilize the food service facilities at the Center.

The Contractor and all persons employed under the contract will not be permitted to fraternize with the corpsmembers or staff at the Center.

Under no condition will the Contractor or any persons employed under the contract be permitted to consume or transport any alcoholic beverages, drugs, or firearms on the site.

Any person found violating these or any other conditions set forth in the contract document will be barred from the project.

## **G.6 PROJECT SAFETY**

The Contractor shall be responsible for initiating, maintaining, and supervising a safety program in connection with the construction project. All reasonable precautions are to be taken to provide protection and to prevent damage, injury, or loss to:

Employees and others who may be affected by the construction project.

All project materials and equipment on the site.

Other property on the site or adjacent thereto.

The Contractor is to erect and maintain approved barricades and all reasonable safeguards for safety and protection, including the posting of danger signs and other warnings against hazards.

During any approved new construction, the Contractor is to erect a fence or other barrier around the construction site and any required storage and staging areas.

Current OSHA regulations must be followed in the placement or erection of safety barriers around excavation. The Contractor will not be permitted to commence with any excavation until this enclosure is completely erected and its completion verified by the Architect/Engineer.

During any repairs, alteration, or additions to existing facilities, the Contractor is to provide a secure separation between the areas where the work is to be performed and areas that are utilized by the Job Corps Center. Care must be taken by the Contractor to provide continuous and uninterrupted occupancy of the adjacent spaces or facilities.

### **G.7 DISPOSAL OF REFUSE**

Refuse resulting from construction operations shall be removed from the site. Refuse shall not be allowed to accumulate for more than one week, or shall be removed at more frequent intervals if directed by the Architect/Engineer.

### **G.8 SCHEDULE OF PROGRESS**

The Contractor shall submit three copies of an updated construction schedule to the Architect/Engineer with each pay request, and when required by major changes in the work or schedule. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payments until such time as the Contractor submits the required progress schedule.

### **G.9 PAYMENTS TO CONTRACTOR**

Before the first progress payment under this contract becomes due, the Contractor shall prepare a breakdown of the contract price that is acceptable to the Contracting Officer. The values in the breakdown will be used for determining progress payments.

Preparatory work done (including shop drawings) will be taken into consideration in preparing estimates upon which progress payments are based.

Unless otherwise provided in the specifications, materials delivered that will be incorporated into the structure will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by the Contractor in a warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer. Before each such payment is made for delivered material stored on the site, the Contractor shall furnish to the Contracting Officer such evidence as may be required as proof of the quantity and value of such materials. Before each payment is made for delivered materials stored on or

off site, the Contractor shall furnish the Contracting Officer properly executed bills of sale for the delivered material upon which payment is being made. The Contractor shall remain responsible for such stored materials.

Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory in place work performed pursuant to a change order as to which final agreement on the equitable price adjustment has not been reached, provided, however, that (except in an unusual case where unilateral determination cannot be made, as provided in the Equitable Adjustment Clause) no further progress payments shall be made under the provision of this paragraph after work is 50% completed as determined by the Contracting Officer.

The Contractor shall not be deemed to have the right to receive any payment due or to become due under this contract unless and until the Contractor's surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has so notified the Contracting Officer of the claims and amounts so paid.

#### **G.10 FURNISHING INFORMATION AND RECORDS**

If the Contractor or any subcontractor under this contract, or the officers or agents of the Contractor or any subcontractor, shall refuse or have refused, except as provided by the terms of the prime contract involved, to furnish to any Government agency or establishment in the legislative or judicial branch of the Government, information or records reasonably pertinent to this contract, or any other Government contract in connection with which the Contractor or such subcontractor has or shall have performed work or furnished materials or supplies or undertaken to do so, the following action may be taken:

In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work under the contract and thereupon the Government may avail itself of the rights and remedies provided in the clause entitled Default of this contract in addition to any other rights and remedies provided by law and under this contract.

In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to above.

The term "subcontract" as used in this paragraph means any contract entered into, or any purchase order issued by, a prime contractor under contract with the Government in connection with the performance of the prime contractor's obligations under such Government contract.

The term "subcontractor" as used in this paragraph means a party to a subcontract other than the prime contractor under the related Government contract.

### **G.11 WORKER'S COMPENSATION LAWS**

The Act of June 25, 1936, 49 Stat. (40 U.S.C. 290) authorized the constituted authority of the several States to apply their worker's compensation laws to all land and premises owned or held by the United States.

### **G.12 REQUIRED INSURANCE**

The Contractor shall procure and maintain, during the entire period of performance under this contract, the following minimum insurance:

Worker's Compensation and Employer's Liability.

1. Statutory: Amounts in coverage as required by the State compensation laws, including provisions for voluntary benefits as required in labor union agreements, and including provisions for extending policy in accordance with laws other jurisdictions.
2. Employer's Liability: At least \$100,000 each accident.

Builder's Risk

The Contractor shall provide Contractor's Builder's Risk and Fire and Extended Coverage Insurance to protect the Government and the Contractor and subcontractors against loss caused by the perils insured against the amount of 100% of the value of the construction project, including items of labor and materials in place or to be used as part of the permanent structure, including surplus materials, temporary structure, and miscellaneous materials and supplies incidental to the work. Such insurance may be maintained in full force and effect until the project is accepted. Policies shall be written to include the United States Government and the Contractor. Write in the words "as their interest may appear". Remove "XCU" exclusions relating to

damage caused by simple explosion, collapse, shoring, grading, and underground utilities.

Comprehensive General Liability (or Blanket Liability)

Contractual liability, including completed operations liability, will be kept in force for at least one year after work has been completed. Coverage will be provided to include the Federal Government and its Operating Contractor. Limits will be:

1. Bodily injury liability - at least \$250,000 each person; \$500,000 each occurrence.
2. Property damage liability - at least \$250,000 each accident; \$250,000 aggregate.
3. Broad form property damage basis - remove "XCU" exclusions relating to damage to property caused by explosions, collapse, shoring, grading, and underground utilities.

Comprehensive Automotive Liability Insurance

This will include coverage for owned, non-owned, and hired vehicles. Bodily injury liability: At least \$250,000 each person; \$500,000 each occurrence.

Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. Companies should be acceptable to the Government. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or material change in the policies diversely affecting the interest of the Government shall not be effective until thirty (30) days after written notice thereof to the Contracting Officer.

The Contractor agrees to insert the substance of this clause, including this last paragraph, in all subcontracts hereunder.

The Certificate of Insurance cancellation section shall read:

"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the below named certificate holder or to the certificate holder named to the left."

### G.13 EQUITABLE ADJUSTMENTS

The provisions of the Differing Site Conditions clause (52.236-2) and the Changes clause (52.243-4) of this contract are supplemented as follows:

The Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this "Equitable Adjustments" clause, for the work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in any written request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a request for equitable adjustment shall be submitted in lump sum with an itemized breakdown as follows:

Direct Costs



Material quantities by trades and unit costs (manufacturing burden associated with material fabrication performed off the job site will be considered to be part of the material costs of the fabricated item delivered to the job site).

Labor breakdown by trades and unit costs (identified with specific item of material to be placed or operation to be performed).

Construction equipment exclusively necessary for the change.

Worker's Compensation and Liability Insurance.

Employment taxes under FICA and FUTA.

Bond costs - when size of change warrants revision, as determined by the Contracting officer pursuant to Clause 52.228-2.

#### Overhead, Profit, and Commission

The maximum allowable overhead, profit, and commission percentages given in this paragraph shall be considered to include, but are not limited to, job-site staff and office expense; incidental job burdens; small tools; and general office overhead allocation. The percentages for overhead, profit, a commission shall be negotiated and may vary according to the nature, extent, and complexity of the work involved, but in no case shall exceed the following:

#### Overhead Profit Commission

To Contractor on work performed by other than its own forces . . .	N/A	N/A	10%
To first tier subcontractor on work performed by its subcontractors . . . . .	N/A	N/A	10%
To Contractor and/or subcontractor for that portion of the work per- formed with their respective forces . . . . .	10%	10%	N/A

Not more than four percentages, not to exceed the maximum percentages shown above, will be allowed, regardless of the number of tier subcontractors. In proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit percentages shall be on the net increase in direct costs for the Contractor or subcontractor performing the work. However, where the Contractor or first tier subcontractor receives proposals in additive and deductive amounts from separate lower tier subcontractors, the commission shall be allowed on the added amounts prior to subtraction of the credit amounts.

The Contractor shall submit with the proposal a request for a time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

In considering a proposal, the Government shall make check estimates in detail utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

After receipt of a proposal, the Contracting officer shall act thereon within 30 days; provided, however, that when the necessity to proceed with a change does not allow time to properly check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of a price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed, except that on proposals under \$100,000, the increase shall not exceed the proposed increase plus 10%.

If a mutually acceptable price cannot be reached, the Contracting Officer may determine the price unilaterally.

The provisions of the Differing Site Conditions clause (52.236-2) and the Changes clause (52.243-4) of this contract are supplemented as follows:

The contractor shall submit all claims for equitable adjustments in accordance with, and subject to, the requirements and limitations set for in this "Equitable Adjustments" Clause.

#### **G.14 TEST RESULTS**

The Contractor must maintain a complete record of all required performance and system tests and reports that are conducted at the construction site. Copies of these test reports must be transmitted to the Architect/Engineer for review and verification of compliance with the contract documents. Copies of all verified test results are to be transmitted to the Government Authorized Representative.

#### **G.15 AS-BUILT RECORD OF MATERIALS AND INSTALLATION**

Prior to the closeout of the project, the Contractor shall furnish an "as-built" record of materials used in the construction. Submittal of this data is made a condition for final payment under the contract. Where several manufacturers' brands, types, or classes of the items listed have been used in the project, the specific areas where each item was used shall be designated. Designations shall be keyed to the area and space designations on the contract drawings. As a general guide, the type of information to be recorded shall include:

- All revisions, except minor or noncritical dimensions.
- Changes in significant details.
- All omissions, including work omitted by accepted alternates.
- Additions to the work.
- Dimensioned locations of major or main utility lines, such as main conduit runs, piping mains, and similar work.
- Location of control valves.

After review by the Architect/Engineer, the Contractor shall make any required corrections and provide a reproducible set of record drawings to the Architect/Engineer.

## **G.16 SUBSTANTIAL COMPLETION**

Substantial Completion is the stage in construction when the project, or a designated portion thereof, has reached a state of completion which would permit the occupancy and/or use by the Department of Labor for its intended function. Substantial completion is further dependent upon the Contractor providing all essential training on operations and maintenance, as required, to the designated Center personnel. Unless indicated otherwise, the Date of Substantial Completion, as acknowledged by the Government, is also the commencement date of all warranties and guarantees required by the contract documents.

When the Contractor feels that the work is substantially complete, he/she should notify the Department of Labor through the Architect/Engineer, requesting a substantial completion walk-thru inspection. Attached to the request must be a list of items to be corrected/completed (punchlist). An inspection of the work shall be conducted by the project Architect/Engineer to review the punchlist and verify its accuracy; should the Contractor's punchlist prove to be inaccurate or incomplete, the Architect/Engineer shall provide revised punchlist. At the time of the inspection, the Contractor may be required to submit to the Architect/Engineer all inspection reports, test results, operation and maintenance manuals, keys and keying schedules, and approved shop drawings for the substantially complete work. This information will then be turned over to the Center Operator.

Upon the successful completion of the inspection, both the Contractor and the Architect/Engineer shall provide certification of substantial completion, using the form provided in Appendix "A". Four copies of the Certificate of Substantial Completion, all with original signatures and with a punchlist attached to each, shall be submitted by the Architect/Engineer to the Department of Labor's Government Authorized Representative for acknowledgement.

Not until the date and Certificate of Substantial Completion have been fully acknowledged by the Department of Labor Government Authorized Representative, will the Contractor be relieved of the responsibility for the security and maintenance of the work, except for punchlist items. Following acknowledgement by the Department of Labor, the Contractor shall provide any required additional training to designated Center Personnel, and shall also complete the punchlist items in accordance with the schedule identified in the Certificate of Substantial Completion. Failure to complete punchlist items within the schedule may be a breach of contract and will be subject to the sanction of the contract.

## **G.17 CONTRACT CLOSEOUT**

After the Certificate of Substantial Completion has been acknowledged by the Department of Labor, and the correction/completion of the new punchlist items has been accomplished, the Contractor should submit a Notice of Final Completion to the Department of Labor through the Architect/Engineer and to the satisfaction of the Department of Labor through the

Architect/ Engineer, requesting a final walk-thru inspection. Following the final inspection, upon the recommendation of the Architect/ Engineer and to the satisfaction of the Department of Labor that the work is fully completed and acceptable, the Contractor should submit all documents required for contract closeout.

The following documents shall be submitted in triplicate to the Architect/Engineer for review and transmittal to the Department of Labor for approval:

Contractor, subcontractor(s), and major supplier(s) Releases of Liens.

Certification of payment to subcontractors and suppliers.

Consent of Surety to final payment.

Copies of all record drawings.

Copies of all warranties, guarantees, and maintenance manuals.

Certificate of one-year Comprehensive General Liability Insurance. (One year from Substantial Completion. If, for any reason, the project proceeds directly to final completion, and no Certificate of Substantial Completion is issued, then insurance shall be for one year from the date of the final walk-thru, as attested to by the Architect/ Engineer and acknowledged by the Government.)

Final payment under the contract will not be made until all required documents, including those listed above, are received and approved by the Department of Labor.

**G.18 PRECEDENCE OF PLANS, SPECIFICATIONS, AND CLAUSES**

In the event of conflict or inconsistency between any of the provisions of this contract, precedence shall be given to the following order:

Standard Clauses of the contract (those bearing numbers beginning with "52").

The Supplemental Provisions.

The specifications, including any and all addenda.

The drawings.

In the case of differences between small and large scale drawings, the large scale drawings shall take precedence over any conflicting notations on the drawings. On any of the drawings where a portion of the work is drawn out and the remainder is shown in the outline, the parts drawn out shall apply also to all other like portions of the work.

Where the word "similar" occurs on the drawings, it shall have a general meaning and shall not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

END OF SUPPLEMENTAL PROVISIONS

**SECTION H - SPECIAL CONTRACT REQUIREMENTS****H.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)" in Section I of this contract.

NUMBER	TITLE	DATE
52.236-2	DIFFERING SITE CONDITIONS	APR 1984
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK	APR 1984
52.236-5	MATERIAL AND WORKMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES	APR 1984
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS	APR 1984
52.236-16	QUANTITY SURVEYS	APR 1984
52.236-17	LAYOUT OF WORK	APR 1984

**H.2 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)**  
**ALTERNATE I (APR 1984)**

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order,"

"designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

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**PART II - CONTRACT CLAUSES****SECTION I - CONTRACT CLAUSES****I.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (if specified) for electronic access to the full text of a clause.

NUMBER	TITLE	DATE
52.202-1	DEFINITIONS	JUL 2004
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-7	ANTI-KICKBACK PROCEDURES	JUL 1995
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2007
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	DEC 2008
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	AUG 2000
52.204-7	CENTRAL CONTRACTOR REGISTRATION	APR 2008
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	SEP 2007
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	SEP 2006
52.214-26	AUDIT AND RECORDS--SEALED BIDDING	MAR 2009
52.214-27	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS--SEALED BIDDING	OCT 1997
52.214-28	SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS--SEALED BIDDING	OCT 1997
52.214-29	ORDER OF PRECEDENCE--SEALED BIDDING	JAN 1986
52.219-6	NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE	JUN 2003
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	MAY 2004
52.219-14	LIMITATIONS ON SUBCONTRACTING	DEC 1996
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES	FEB 1997



52.222-3	CONVICT LABOR	JUN 2003
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS	JUL 2005
	ACT-OVERTIME COMPENSATION	
52.222-6	DAVIS-BACON ACT	JUL 2005
52.222-7	WITHHOLDING OF FUNDS	FEB 1988
52.222-8	PAYROLLS AND BASIC RECORDS	FEB 1988
52.222-9	APPRENTICES AND TRAINEES	JUL 2005
52.222-10	COMPLIANCE WITH COPELAND ACT	FEB 1988
	REQUIREMENTS	
52.222-11	SUBCONTRACTS (LABOR STANDARDS)	JUL 2005
52.222-12	CONTRACT TERMINATION - DEBARMENT	FEB 1988
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED	FEB 1988
	ACT REGULATIONS	
52.222-14	DISPUTES CONCERNING LABOR STANDARDS	FEB 1988
52.222-15	CERTIFICATION OF ELIGIBILITY	FEB 1988
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-27	AFFIRMATIVE ACTION COMPLIANCE	FEB 1999
	REQUIREMENTS FOR CONSTRUCTION	
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED	SEP 2006
	VETERANS, VETERANS OF THE VIETNAM ERA,	
	AND OTHER ELIGIBLE VETERANS	
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH	JUN 1998
	DISABILITIES	
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED	SEP 2006
	VETERANS, VETERANS OF THE VIETNAM ERA,	
	AND OTHER ELIGIBLE VETERANS	
52.222-50	COMBATING TRAFFICKING IN PERSONS	FEB 2009
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW	AUG 2003
	INFORMATION	
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.223-14	TOXIC CHEMICAL RELEASE REPORTING	AUG 2003
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING	DEC 2007
	PRODUCTS	
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN	JUN 2008
	PURCHASES	
52.227-1	AUTHORIZATION AND CONSENT	DEC 2007
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT	DEC 2007
	AND COPYRIGHT INFRINGEMENT	
52.227-4	PATENT INDEMNITY--CONSTRUCTION CONTRACTS	DEC 2007
52.228-2	ADDITIONAL BOND SECURITY	OCT 1997
52.228-5	INSURANCE--WORK ON A GOVERNMENT	JAN 1997
	INSTALLATION	
52.228-11	PLEDGES OF ASSETS	FEB 1992
52.228-12	PROSPECTIVE SUBCONTRACTOR REQUESTS FOR	OCT 1995
	BONDS	
52.228-14	IRREVOCABLE LETTER OF CREDIT	DEC 1999
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	APR 2003
52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION	SEP 2002
	CONTRACTS	
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.232-33	PAYMENT BY ELECTRONIC FUNDS--CENTRAL	OCT 2003
	CONTRACTOR REGISTRATION	
52.233-1	DISPUTES	JUL 2002

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52.233-3	PROTEST AFTER AWARD	AUG 1996
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.236-2	DIFFERING SITE CONDITIONS	APR 1984
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK	APR 1984
52.236-5	MATERIAL AND WORKMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES	APR 1984
\$ 52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS	APR 1984
52.236-17	LAYOUT OF WORK	APR 1984
52.236-26	PRECONSTRUCTION CONFERENCE	FEB 1995
52.242-13	BANKRUPTCY	JUL 1995
52.243-4	CHANGES	JUN 2007
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	MAR 2009
52.248-3	VALUE ENGINEERING--CONSTRUCTION	SEP 2006
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	MAY 2004
52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

## **I.2 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

## **I.3 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT--REPORTING REQUIREMENTS (MAR 2009)**

(a) Definitions. As used in this clause-

"Contract", as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

"First-tier subcontract" means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

"Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

"Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

"Total compensation" means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
  - (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - (5) Above-market earnings on deferred compensation which is not tax-qualified.
  - (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.
- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
- (c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.
- (d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.

- (1) The Government contract and order number, as applicable.
- (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide-

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if-

(i) In the Contractor's preceding fiscal year, the Contractor received-

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) The applicable North American Industry Classification System (NAICS) code.
- (vi) Funding agency.
- (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if-
  - (A) In the subcontractor's preceding fiscal year, the subcontractor received-
    - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
    - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
  - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

#### **I.4 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)**

- (a) Definitions. As used in this clause-

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

- (b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

- (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
- (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
- (3) For long-term contracts-
- (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
  - (ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.
- (c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardstopics/>.
- (d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.
- (e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.
- (f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.
- (g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code 236220 assigned to contract number .

[Contractor to sign and date and insert authorized signer's name and title].

## **I.5 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

- (a) Definition. As used in this clause--

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

- (b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are

customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

### Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B-- Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor- Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

## **I.6 52.225-11 BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)**

(a) Definitions. As used in this clause--

"Caribbean Basin country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"-- (1) Means any item of supply (including construction material) that is--

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);



(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if--

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

"Free Trade Agreement country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract

award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

#### Foreign and Domestic Construction Materials Price Comparison

Price Construction material description	Measure	Quantity	(dollars) \1\	Unit of
				Item 1:

Foreign construction material .....

Domestic construction material .....

Item 2:

Foreign construction material .....

Domestic construction material .....

----- \1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued). List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.

### I.7 52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be 20% percent of the bid price or , whichever is less.-

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

## **I.8 52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (NOV 2006)**

(a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.  
Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

**I.9 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2008)**

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

- (i) Name and address of the Contractor.
  - (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)
  - (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
  - (iv) Description of work or services performed.
  - (v) Delivery and payment terms (e.g., discount for prompt payment terms).
  - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
  - (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
  - (viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.
  - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
  - (x) Electronic funds transfer (EFT) banking information.
    - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
    - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232- 38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.
    - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
  - (xi) Any other information or documentation required by the contract.
- (3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.
- (i) The designated billing office received a proper invoice.
  - (ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
  - (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.



(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to--

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request,

discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with the Miller Act (40 U.S.C. 3133), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost- reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

- (ii) Affected contract number and delivery order number if applicable;
  - (iii) Affected contract line item or subline item, if applicable; and
  - (iv) Contractor point of contact.
- (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

**I.10 52.236-4 PHYSICAL DATA (APR 1984)**

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by:

Allender Butzke Engineers, Inc. for geotechnical site exploration, included in the specifications in Division 02, Existing Conditions, Section 02 3200 Geotechnical Investigations in the Project Manual.

- (b) Weather Conditions:

See Specifications Section 01100.

- (c) Transportation Facilities

N/A

- (d) Other Physical Data

N/A

**I.11 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)**

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

**I.12 52.243-7 NOTIFICATION OF CHANGES (APR 1984)**

(a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer. "Specifically Authorized Representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within 30 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--
  - (i) What contract line items have been or may be affected by the alleged change;
  - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
  - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within 30 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments. (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

### **I.13 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)**

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

#### **I.14 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/far/index.html>